



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703)583-3800 FAX (703) 583-3821
www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

Thomas A. Faha
Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
WHEELER SURVEY COMPANY LLC
FOR
THE WHEELER DATA CENTER
Registration No. 74152**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Wheeler Survey Company LLC regarding the Wheeler Data Center for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. “ekW” means electrical kilowatt.
5. “Facility” means the Wheeler Survey Company LLC Facility located at 24325 Grand Fork Drive in Sterling, Virginia.
6. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. “NRO” means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
8. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the Virginia Air Pollution Control Law.
9. “Permit” means a Minor New Source Review Permit dated September 13, 2018.
10. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” mean 9 VAC 5 chapters 10 through 80.
11. “Va. Code” means the Code of Virginia (1950), as amended.
12. “VAC” means the Virginia Administrative Code.
13. “Virginia Air Pollution Control Law” means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
14. “Wheeler” means Wheeler Survey Company LLC a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Wheeler Survey Company LLC is a “person” within the meaning of Va. Code § 10.1-1300.

SECTION C: Findings of Fact and Conclusions of Law

1. Wheeler owns and operates the Facility located in Sterling, Virginia. The Facility is a data center. The Permit authorizes Wheeler to construct and operate emergency diesel engine-generator sets at a data center.
2. Permitted equipment at the Facility includes, but is not limited to, two groups of diesel engine-generators. Group 1 (EG1-EG15) consists of 15 units rated at 2,750 ekW each. Group 2 (EG16-EG20) consists of 5 units rated at 1,750 ekW each.
3. On May 10, 2019, DEQ was notified by Wheeler through its consultant, that based on preliminary stack test data, several units at the Facility had failed initial performance testing for Nitrogen Oxides (NO_x) and Carbon Monoxide (CO). Based on those preliminary results, Wheeler informed DEQ that they immediately locked out the generators so that they could not be operated for any purpose.

4. On May 17, 2019, DEQ received a stack test report from Wheeler for initial compliance testing conducted at the Facility on April 2 through April 5, 2019. Emissions from each engine-generator tested in Group 1 and Group 2 was documented as follows:

Group 1- Unit A1E

Pollutant	Generator Electrical Power Output >10% Rated Capacity	Generator Electrical Power Output ≤ 10% of Rated Capacity
Nitrogen Oxides (as NO ₂)	63.5 lbs/hr (>90%)	10.9 lbs/hr
Carbon Monoxide (CO)	3.5 lbs/hr (>90%)	4.7 lbs/hr

Group 1- Unit B1F

Pollutant	Generator Electrical Power Output >10% Rated Capacity	Generator Electrical Power Output ≤ 10% of Rated Capacity
Nitrogen Oxides (as NO ₂)	53.5 lbs/hr (>90%)	10.7 lbs/hr
Carbon Monoxide (CO)	2.2 lbs/hr (>90%)	4.7 lbs/hr

Group 2- Unit B1M

Pollutant	Generator Electrical Power Output >10% Rated Capacity	Generator Electrical Power Output ≤ 10% of Rated Capacity
Nitrogen Oxides (as NO ₂)	25.8 lbs/hr (>90%)	5.2 lbs/hr
Carbon Monoxide (CO)	2.3 lbs/hr (>90%)	2.1 lbs/hr

5. The stack test report received by DEQ on May 17, 2019, did not include document certification language. DEQ informed Wheeler about the missing language and Wheeler submitted the certification language via email on May 17, 2019.
6. Condition 11 of the Permit contains hourly emissions limits for Group 1 generators as follows for NO_x and CO:

Group 1

Pollutant	Generator Electrical Power Output >10% Rated Capacity	Generator Electrical Power Output ≤ 10% of Rated Capacity
Nitrogen Oxides (as NO ₂)	51.8 lbs/hr	4.6 lbs/hr
Carbon Monoxide (CO)	3.3 lbs/hr	2.6 lbs/hr

7. Condition 12 of the Permit contains hourly emissions limits for Group 2 generators as follows for NO_x and CO:

Group 2

Pollutant	Generator Electrical Power Output >10%	Generator Electrical Power Output ≤ 10% of
------------------	--------------------------------------------------	---------------------------------------------------

	Rated Capacity	Rated Capacity
Nitrogen Oxides (as NO ₂)	28.6 lbs/hr	3.2 lbs/hr
Carbon Monoxide (CO)	3.8 lbs/hr	1.4 lbs/hr

8. 9 VAC 5-20-230.A states in relevant part that the following documents submitted to the board shall be signed by a responsible official: (i) any emission statement, application form, report, or compliance certification; (ii) any document required to be so signed by any provision of the regulations of the board; or (iii) any other document containing emissions data or compliance information the owner wishes the board to consider in the administration of its air quality programs.
9. 9 VAC 5-20-230.B states that any person signing a document under subsection A of this section shall make the following certification "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
10. On June 14, 2019, based on the emissions data submitted to DEQ on May 17, 2019, the Department issued Notice of Violation No. ANRO001227 to Wheeler for the violations described in paragraphs C(3) through C(9) above.
11. Based on the emissions data submitted to DEQ on May 17, 2019 the Board concludes that Wheeler has violated Permit Conditions 11, and 12, and 9VAC5-20-230 as described in paragraphs C(3) through C(9), above.
12. At Wheeler's request, DEQ met with representatives from Wheeler on June 4, 2019, to discuss the stack test results and a path forward for compliance. Wheeler confirmed to DEQ that it had locked out the engine-generators as soon as it learned of the stack test results.
13. An amended permit was issued to Wheeler on August 6, 2019 that resolves the aforementioned violations. On August 20-22, 2019, Wheeler conducted stack testing to demonstrate compliance with the new limits, and the results confirmed that the generators meet all of the emission limits in the amended permit.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Wheeler Survey Company LLC, and Wheeler Survey Company LLC agrees to: pay a civil charge of \$25,953.69 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Wheeler Survey Company LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Wheeler Survey Company LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Wheeler Survey Company LLC for good cause shown by Wheeler Survey Company LLC or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Wheeler Survey Company LLC admits the jurisdictional allegations, and agrees not to contest, but does not admit to the findings of fact, and conclusions of law contained herein.
4. Wheeler Survey Company LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Wheeler Survey Company LLC declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Wheeler Survey Company LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Wheeler Survey Company LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Wheeler Survey Company LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Wheeler Survey Company LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Wheeler Survey Company LLC. Nevertheless, Wheeler Survey Company LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Wheeler Survey Company LLC completed all of the requirements of the Order;
- b. Wheeler Survey Company LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Wheeler Survey Company LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Wheeler Survey Company LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of Wheeler Survey Company LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Wheeler Survey Company LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Wheeler Survey Company LLC.
13. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
14. By its signature below, Wheeler Survey Company LLC voluntarily agrees to the issuance of this Order

And it is so ORDERED this 25th day of February, 2020.



Thomas A. Faha, Regional Director
Department of Environmental Quality

Wheeler Survey Company LLC voluntarily agrees to the issuance of this Order.

Date: 2/19/2020 By: [Signature], Site Operations Manager
(Person) (Title)
[Wheeler Survey Company LLC]

Commonwealth of Virginia
City/County of Loudoun

The foregoing document was signed and acknowledged before me this 19th day of February, 2020, by Zachary D. Miller who is Site operations manager of Wheeler Survey Company LLC on behalf of the company.

[Signature]

Notary Public

7838501

Registration No.

My commission expires: 10/31/2023

Notary seal:

DADRIEN AUSTIN CALDWELL
NOTARY PUBLIC - 7838501
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES OCTOBER 31, 2023